

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,  
HAREBRAINED HOLDINGS, INC.,  
JORDAN WEISMAN, PIRANHA GAMES  
INC., IMMEDIARES PRODUCTIONS, LLC,  
and DOES 1–10

Defendants.

CASE NO. 2:17-CV-00327-TSZ

**MOTION FOR LEAVE TO AMEND  
AMENDED COMPLAINT**

**NOTE ON MOTION CALENDAR:  
DECEMBER 8, 2017**

## I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 15(a) (“Rule 15(a)”) and controlling precedent in this Circuit, plaintiff Harmony Gold, U.S.A., Inc. (“Harmony Gold”) moves the Court to allow Harmony Gold to amend its Amended Complaint and file a Second Amended Complaint (“SAC”). By this motion, Harmony Gold seeks leave to file a SAC to clarify the source and scope of the rights in the Robotech warrior robots that it has been granted by an exclusive license from Tatsunoko Production Co., Ltd. (“Tatsunoko”). The amendment is necessary to clarify some unclear and unintentionally inaccurate statements in Harmony Gold’s prior pleading, which have created unnecessary confusion regarding the source and scope of Harmony Gold’s rights.

Harmony Gold’s motion is timely, as it several months before the deadline for amended pleadings. Furthermore, there is no potential prejudice to defendants as the proposed amendment does not seek to alter or expand the liability of the defendants. Rather, Harmony Gold seeks solely to clarify Harmony Gold’s own standing to assert its claims. Accordingly, Harmony Gold respectfully requests that the Court grant its motion for leave to amend.

## II. FACTUAL BACKGROUND

### A. *Harmony Gold’s Initial and First Amended Complaints.*

Harmony Gold filed its initial complaint, alleging copyright infringement and breach of contract against defendants Harebrained Schemes LLC, Harebrained Holdings, Inc., Jordan Weisman, and Piranha Games, Inc. (“Piranha”), on March 1, 2017. In that initial complaint, which was filed by Harmony Gold’s former counsel of record (Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP), Harmony Gold alleged that it had obtained certain exclusively licensed rights from Tatsunoko, including the copyright in and to the Japanese animated television series, “Macross,” and two other series, and that defendants had infringed Harmony Gold’s exclusive license by creating animated warrior robots substantially similar to, and

1 derivative of, robots contained in Harmony Gold's exclusively licensed work. (Dkt. 1 ¶¶ 11-12,  
2 31-36.)

3 On May 1, 2017, Harmony Gold filed an amended complaint (the "FAC") in order to add  
4 a new defendant, InMediaRes Productions, LLC, and corresponding allegations related to that  
5 defendant. (Dkt. 31.) Harmony Gold did not allege any new allegations or claims against the  
6 original defendants in its FAC. To the contrary, the complaint has remained substantively the  
7 same against those defendants since its initial filing.

8 On May 12, 2017, the Court issued an Order setting trial dates and other related dates.  
9 (Dkt. 35.) The deadline to amend the pleadings is currently set for March 5, 2018. Trial is  
10 currently scheduled for September 24, 2018. The discovery cut off is set for June 4, 2018. To  
11 date, the parties have conducted only minimal discovery. The parties have served one round of  
12 discovery requests, and exchanged initial responses and a few hundred pages of documents. No  
13 depositions have yet taken place. Bina Decl. ¶ 2. Rather, for the past several months the parties  
14 have operated under an informal discovery stay while they engaged in settlement discussions.  
15 *Id.*

16 **B. *The Unrelated Harmony Gold/Tatsunoko Arbitration.***

17 Meanwhile, in a wholly unrelated matter, in May 2017 Harmony Gold engaged in a  
18 private arbitration against its licensor, Tatsunoko. Bina Decl. ¶ 3. Harmony Gold was  
19 represented in the arbitration by its current counsel in this matter, Jessica Stebbins Bina of  
20 Latham & Watkins, LLP. *Id.* Harmony Gold's arbitration against Tatsunoko was confidential,  
21 but Harmony Gold thereafter sought court confirmation of the award in the Central District of  
22 California, as Tatsunoko stated it would only pay the awarded attorneys' fees if the award were  
23 judicially confirmed. *Id.*

24 In or around September 2017, counsel for defendant Piranha approached then-counsel for  
25 Harmony Gold, and stated that it believed, based on an out-of-context sentence in the Harmony

Gold/Tatsunoko arbitration award, that Harmony Gold lacked standing to assert its copyright infringement claims against Piranha. Bina Decl. ¶ 4. Harmony Gold's counsel immediately disputed this claim, explaining that the arbitration did not address the issues claimed by Piranha and that Harmony Gold had a valid, binding exclusive license agreement from Tatsunoko. *Id.*

On October 2, 2017, counsel for Piranha had a call with counsel for Harmony Gold to discuss these matters. Bina Decl. ¶ 5. Ms. Bina participated in this call to provide factual background relating to the arbitration. *Id.* During this call, Harmony Gold's then-counsel stated that he believed Harmony Gold had inadvertently misstated some facts in its recitation of the 33-year history in its initial complaint, and that he would likely amend the complaint to address this and clarify the source and scope of Harmony Gold's rights. *Id.*

**C. *Harmony Gold's Proposed Amendment and Piranha's Opportunistic Summary Judgment Motion.***

Counsel did not immediately amend the complaint, however, as the parties continued to discuss the matter. Bina Decl. ¶ 6. On October 18, 2017, Harmony Gold changed counsel in this matter to Ms. Bina of Latham & Watkins. *Id.* Ms. Bina formally substituted in as counsel of record on October 31, 2017, after obtaining a stipulation and order from all parties and the Court. (Dkt. 46.) Shortly thereafter, she reached out to Piranha's counsel to continue the discussion regarding Piranha's mistaken understanding of the Harmony Gold/Tatsunoko arbitration award. Bina Decl. ¶ 7. After an initial call on or about November 6, 2017, on November 8, 2017, Piranha's counsel informed Ms. Bina that Piranha intended to immediately move for summary judgment on its theory that Harmony Gold lacked standing. *Id.* Ms. Bina again disputed Piranha's claims and reiterated Harmony Gold's intention to promptly amend the complaint to more fully address the parties' history. *Id.* Nonetheless—and apparently in an attempt to beat Harmony Gold to the punch—Piranha filed a motion for summary judgment on November 13, 2017. (Dkt. 47.)

On November 21, 2017, Harmony Gold circulated a proposed amended complaint to defendants' counsel, asking whether counsel would stipulate to the proposed amendment. As the amendment addresses only Harmony Gold's history, and does not seek in any way to expand the scope of defendants' liability or otherwise prejudice defendants' defense in this matter, Harmony Gold anticipated a courteous response. Instead, Piranha's counsel responded: "Before deciding on whether we will oppose the motion to amend the complaint a second time, could you please tell us whether you will be consenting to Piranha's motion for summary judgment?" *See* Bina Decl. ¶ 8, Ex. A. Harmony Gold asked defendants again whether they would consent to amendment, on the evening of November 21 and the morning of November 22. Counsel for both Piranha and Harebrained Schemes confirmed on November 22, 2017, that they intended to oppose amendment. Bina Decl. ¶ 9, Exs. A, B.

Given defendants' refusal to consent to amendment, this motion follows.

### III. ARGUMENT

Rule 15(a)(2) provides that federal courts "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). This standard is reflected in the decisions of the Court of Appeal in this Circuit: "leave to amend should be granted with extreme liberality." *Peterson v. Boeing Co.*, 715 F.3d 276, 282 (9th Cir. 2013) (quotations omitted); *accord Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). Indeed, the Ninth Circuit has held it is an abuse of discretion to deny leave to amend unless there is prejudice to the opposing party or the amendment is sought in bad faith or is frivolous. *See, e.g., Howey v. United States*, 481 F.2d 1187, 1190-91 (9th Cir. 1973); *see also Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) (leave should be granted absent a clear showing that amendment would be futile).

The courts determine the propriety of a motion to amend by ascertaining the presence of any of the following factors: prejudice to the opposing party, bad faith, undue delay, repeated

failure to cure deficiencies by amendment, and/or futility. *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999); *Eminence Cap.*, 316 F.3d at 1052 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). “Absent prejudice, or a strong showing of any of the remaining [] factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Id.* (emphasis in original). Leave should be granted unless the court determines that the pleading “could not possibly be cured by the allegation of other facts,” *see Toy Investments, Inc. v. Poof-Slinky, Inc.*, 2013 WL 6095838, at \*1 (W.D. Wash. Nov. 20, 2013), and the burden is on the opposing party to rebut the presumption in favor of amendment, *see DCD Progs., Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987); *Toy Investments*, 2013 WL 6095838, at \*2. The court must indulge “all inferences in favor of granting the motion.” *Griggs*, 170 F.3d at 880.

Here, the factors overwhelmingly favor granting leave to amend. Harmony Gold’s motion is timely, made early in discovery and months before the deadline for amended pleadings. It does not enlarge the claims against the defendants, introduce new liability theories, or otherwise create any possible prejudice. To the contrary, it simply corrects and clarifies Harmony Gold’s own licensing history: clarification that would need to be at trial in any event. The presumption in favor of amendment applies, and leave to amend should be granted.

**A. *The Proposed Amendments Will Not Unduly Prejudice Defendants.***

In its proposed amendment, Harmony Gold does not seek to expand its claims against defendants or enlarge their liability. Instead, Harmony Gold seeks only to clarify the source and scope of its own rights. In such instances, amendment is routinely granted. *See Nichols v. Club for Growth Action*, --- F. Supp. 3d ---, 2017 WL 4857423, at \*3 (D.D.C. Oct. 25, 2017) (holding defendant would not be prejudiced by amendment to clarify copyright ownership where amendments did not alter underlying claims); *see also Doc’s Dream, LLC v. Dolores Press, Inc.*, 678 Fed. Appx. 541, 542 (9th Cir. 2017) (holding it as error for district court to have refused to allow plaintiff to amend complaint to clarify copyright ownership); *Garcia v. Coleman*, 2007

1 WL 3010384, at \*1 (N.D. Cal. Oct. 12, 2007) (granting leave to amend to clarify copyright  
2 ownership).

3 Indeed, the law is very clear that where the nonmoving parties have reason to know the  
4 factual basis for and have had the opportunity to take discovery regarding the issues raised in the  
5 proposed amendments, there is no prejudice in permitting amendment. *See Owens v. Kaiser*  
6 *Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (finding no prejudice where  
7 “amendment . . . required no additional discovery”); *Phoenix Solutions, Inc. v. Sony Electronics,*  
8 *Inc.*, 637 F. Supp. 2d 683, 691 (N.D. Cal. 2009) (“When the defendant was on notice of the  
9 additional proposed factual allegations, the defendant is not seriously prejudiced by the  
10 amendment.”); *Howey*, 481 F.2d at 1191 (finding no prejudice even where amendment was  
11 sought five years after filing of initial complaint and trial had begun because the defendant’s  
12 “preparation of a defense against [existing] claims necessarily included a factual and legal  
13 investigation covering the same area which would be explored . . . in defending against the [new  
14 claims]”).

15 That is precisely the case here. Harmony Gold’s proposed amendments cannot possibly  
16 cause undue prejudice to the defendants, as the allegations against defendants remain exactly the  
17 same in the amended complaint as in the current complaint. Defendants are alleged to have done  
18 the same wrong—copied, exploited, and merchandized images owned by Harmony Gold—with  
19 the same damages. The proposed amendment does not expand defendants’ burden or potential  
20 liability in any way. Moreover, the parties have nearly seven months’ time remaining for  
21 defendants to take full discovery on all of Harmony Gold’s claims, with eight months before  
22 dispositive motions are due and ten months before trial. Prejudice does not exist here, and  
23 accordingly leave to amend should be granted.

**B. *No Other Factor Would Warrant Denying Leave To Amend.***

“Unless undue prejudice to the opposing party will result, a trial judge should ordinarily permit a party to amend its complaint.” *Howey*, 481 F.2d at 1190. There is no reason to depart from the normal course here.

**1. *Harmony Gold’s Proposed Amendments Are Offered In Good Faith.***

The Ninth Circuit has explained that bad faith in the context of a motion to amend requires that “the plaintiff merely is seeking to prolong the litigation by adding new but baseless legal theories.” *Griggs*, 170 F.3d at 881. Harmony Gold’s proposed amendments are clearly offered in good faith. The proposed amendments have been offered well in advance of the deadline to amend the pleadings, and seek only to clarify Harmony Gold’s own standing to assert its claims.

Furthermore, a substitution of counsel itself is “substantial competent evidence” that such bad faith does not exist. *Owens*, 244 F.3d at 712. Here, Harmony Gold’s present counsel took over the litigation of this case only one month ago, and has consistently explained to opposing counsel both its legal and factual basis for the planned amendment.

**2. *Harmony Gold Has Not Unduly Delayed In Proposing Amendment.***

Relatedly, Harmony Gold’s amendments cannot possibly have been unduly delayed. Leave to amend has been found appropriate even after discovery has closed and trial has begun. *See Howey*, 481 F.2d at 1191.<sup>1</sup> In this case, no major deadlines—indeed, no discovery deadlines—have yet passed. The deadline for amending pleadings is still months away, the trial is scheduled for ten months from present, and Harmony Gold’s present counsel has been in the case for only four weeks. (Dkt. 35.)

---

<sup>1</sup> Even undue delay “by itself . . . is insufficient to justify denying a motion to amend.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999); *see also United States v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981) (“The mere fact that an amendment is offered late in the case . . . is not enough to bar it.”)



1                   **3.       *Harmony Gold Has Never Substantively Amended Its Complaint.***

2           Unlike instances where a plaintiff repeatedly failed to cure deficiencies in its complaint,  
3 Harmony Gold has never substantively amended its original complaint. Harmony Gold has only  
4 amended its complaint once—to add an additional named defendant without changing any  
5 allegations against the other defendants. This is not a case where plaintiff has repeatedly failed  
6 to amend an invalid complaint.

7                   **4.       *Harmony Gold's Proposed Amendments Are Not Futile.***

8           Finally, Harmony Gold's amendment is not futile. An amendment is “futile” only if a  
9 complaint would still clearly be subject to dismissal; otherwise, a plaintiff should be afforded an  
10 opportunity to test its claims on the merits. *DCD Progs*, 833 F.2d at 188. In evaluating futility,  
11 the Court must accept the allegations in the amended pleading as true. *See Harris v. Rand*, 682  
12 F.3d 846, 850 (9th Cir. 2012). Harmony Gold seeks to clarify its own standing by adding  
13 allegations related to the source and scope of its licensed rights, which assist in clarifying its  
14 standing to pursue the claims in this case. *See* Ex. 1 ¶¶ 18-20. These allegations, presumed true,  
15 demonstrate that Harmony Gold is the exclusive licensee of the claimed rights and has standing  
16 to assert those rights against defendants. *See Nichols*, 2017 WL 4857423, at \*5 (denying motion  
17 for summary judgment based on lack of standing for failure to adequately assert copyright  
18 ownership and granting motion to amend to clarify copyright ownership). These allegations are  
19 clearly sufficient to withstand dismissal, and Harmony Gold should be afforded the opportunity  
20 to test its claims on the merits.

21                   **IV.       CONCLUSION**

22           For the foregoing reasons, Harmony Gold respectfully requests that the Court grant  
23 Harmony Gold leave to amend its operative complaint, as reflected in Exhibits 1 and 2.

DATED: November 22, 2017

CALFO EAKES & OSTROVSKY PLLC

By s/ Damon C. Elder

Damon C. Elder, WSBA #46754

Andrew R.W. Hughes, WSBA #49515

1301 Second Avenue, Suite 2800

Seattle, WA 98101

Phone: (206) 407-2200

Fax: (206) 407-2224

Email: [damone@calfoeakes.com](mailto:damone@calfoeakes.com)

[andrewh@calfoeakes.com](mailto:andrewh@calfoeakes.com)

LATHAM & WATKINS LLP

By: s/ Jessica Stebbins Bina

Jessica Stebbins Bina

10250 Constellation Blvd., 3<sup>rd</sup> Floor

Los Angeles, CA 90067

Telephone: (424) 653-5525

Facsimile: (424) 653-5501

Email: [jessica.stebbinsbina@lw.com](mailto:jessica.stebbinsbina@lw.com)

*Attorneys for Plaintiff Harmony Gold U.S.A.,  
Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 22, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants.

DATED this 22nd day of November, 2017.

s/ Erica Knerr  
Erica Knerr

## **EXHIBIT 1**

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,  
HAREBRAINED HOLDINGS, INC.,  
JORDAN WEISMAN, PIRANHA GAMES  
INC., IMMEDIARES PRODUCTIONS,  
LLC, and DOES 1–10

Defendants.

CASE NO. 2:17-cv-00327-TSZ

**SECOND AMENDED COMPLAINT**

Plaintiff Harmony Gold U.S.A., Inc. (“Harmony Gold”) alleges as follows:

**PARTIES**

1. Plaintiff Harmony Gold U.S.A., Inc., is a California corporation with its principal place of business in Los Angeles, California.
2. Defendant Harebrained Schemes LLC is a limited liability company formed under the laws of the State of Washington with its principal place of business in Kirkland, Washington.
3. Defendant Harebrained Holdings, Inc., is a corporation formed under the laws of the State of Washington with its principal place of business in Bellevue, Washington. On information and belief, Harebrained Holdings, Inc., does business under the name Harebrained

1 Schemes. (Harebrained Schemes LLC and Harebrained Holdings, Inc., are referred to  
2 collectively as “Harebrained Schemes”).

3 4. Defendant Jordan Weisman (“Weisman”) is an individual who, on information  
4 and belief, resides in Bellevue, Washington. On further information and belief, Weisman is the  
5 CEO and registered agent for Harebrained Schemes LLC, and is a governor of Harebrained  
6 Holdings, Inc. Weisman is the moving, active and conscious force behind Harebrained Schemes;  
7 has directed and controlled the activities of Harebrained Schemes complained of herein; has  
8 participated in, assisted in and/or is responsible for the conduct alleged herein; and entered into  
9 the Settlement Agreement with Harmony Gold at issue in the breach-of-contract claim set forth  
10 in this Complaint.

11 5. Defendant Piranha Games Inc. (“Piranha Games”) is a corporation created under  
12 the laws of British Columbia, Canada, with its principal place of business in Vancouver, British  
13 Columbia, Canada.

14 6. Defendant InMediaRes Productions, LLC, is a limited liability company formed  
15 under the laws of the State of Washington, with its principal place of business in Lake Stevens,  
16 Washington. On information and belief, InMediaRes Productions, LLC, operates the imprint  
17 game production company Catalyst Game Labs, and hereinafter is referred to as “Catalyst Game  
18 Labs”.

19 7. On information and belief, Does 1–10 (collectively, the “Doe Defendants”) are  
20 individuals and business entities who have participated or assisted in the conduct alleged herein  
21 or are otherwise responsible therefor. The identities of these Doe Defendants presently are not  
22 and cannot be known to Harmony Gold, but these persons and/or entities will be added as named  
23 defendants to this action as and when they are identified (collectively, Harebrained Schemes  
24 LLC, Harebrained Holdings, Inc., Weisman, Piranha Games, Catalyst Game Labs and the Doe  
25 Defendants are referred to herein as “Defendants”).

## **JURISDICTION AND VENUE**

8. This Court has jurisdiction because (i) this action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and jurisdiction is specifically conferred by 28 U.S.C. §§ 1331 and 1338(a); and (ii) this is an action between citizens of different states in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the Washington State common law claim is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) in that Defendants Harebrained Schemes LLC, Harebrained Holdings, Inc., Weisman and Catalyst Game Labs reside in this judicial district. Venue is proper under 28 U.S.C. § 1391(c)(3) in that Defendant Piranha Games is a foreign resident based in Vancouver, British Columbia, Canada, and on information and belief there is no other judicial district in which venue would be more appropriate. Venue is also proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

## **FACTS**

### **Harmony Gold and the History of “Robotech”**

10. This case involves animated giant warrior robots. In or around 1982, Japan-based Tatsunoko Production Company, Ltd. (“Tatsunoko”), together with Japan-based Big West and Studio Nue, created a series of original warrior robots and incorporated them into an animated television series in Japan named “Macross.” Although ownership in various elements of “Macross” was jointly held by Tatsunoko, Big West, and Studio Nue, by agreement between the parties, Tatsunoko has always had the exclusive right to license “Macross” internationally, including all international rights in and to the characters and artwork contained in “Macross.” Consistent with this agreement, Big West and Studio Nue have never exploited “Macross” outside of Japan.

1           11. In the early 1980s, Tatsunoko produced two additional animated television series  
2 in Japan that incorporated its futuristic warrior robots — “Mospeada” and “The Southern  
3 Cross”— for which it was also the exclusive owner in Japan.

4           12. In 1984, Tatsunoko granted entertainment production company Harmony Gold an  
5 exclusive license to adapt the Macross, Mospeada and The Southern Cross series for a television  
6 series in the United States, which Harmony Gold named “Robotech.” Harmony Gold’s  
7 exclusive license to “Macross” expressly included all rights to the artwork, animation, and  
8 characters contained in “Macross” including all rights to exclusively exploit the artwork,  
9 animation, and characters. In 1985, the first of 85 episodes of the Harmony Gold-produced  
10 Robotech animated series aired in the United States. (Hereinafter, all of Harmony Gold’s  
11 Macross, Mospeada, The Southern Cross and Robotech shows, characters, products and  
12 derivative works are referred to as “Robotech.”) Consistent with its agreement with Tatsunoko,  
13 Harmony Gold obtained a copyright registration in “Macross,” including the animation, story,  
14 and soundtrack, in all 36 episodes of the series (PAu 740,323; March 28, 1985 registration date).

15           13. Tatsunoko also granted Harmony Gold an exclusive license to market in the  
16 United States all merchandise incorporating Robotech warrior robots, such as books, toys, video  
17 games, films, comic books and apparel. Harmony Gold possesses this exclusive license to this  
18 day.

19           14. In 1991, Tatsunoko and Harmony Gold renewed Harmony Gold’s exclusive  
20 license for Macross, Mospeada, and The Southern Cross, including Harmony Gold’s exclusive  
21 license in and to the “Macross” artwork, animation, characters, and merchandising rights in the  
22 United States, and through a series of operative amendments, this license remains valid today.


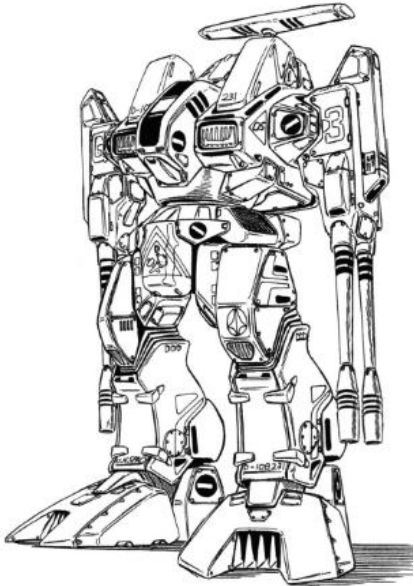
23           15. Harmony Gold and Tatsunoko are owners of a large portfolio of United States  
24 Copyright Registrations for animated programs, books, comic books and other materials  
25 incorporating images of the Robotech warrior robots, including, without limitation, the  
following:



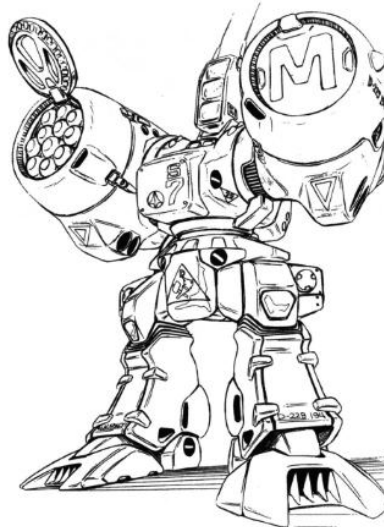
- “Macross: Booby Trap” (PA 252,486); February 7, 1985 registration date;
- “Mospeada” (PAu 740,321); March 28, 1985 registration date;
- “Southern Cross” (PAu 740,322); March 28, 1985 registration date;
- “Macross” (PAu 740,323); March 28, 1985 registration date;
- “Robotech” (PA 260,432); August 22, 1985 registration date;
- “Robotech II: The Sentinels” (PA 370,656); August 11, 1987 registration date;
- “Robotech II: The Sentinels; Episodes 1, 2 and 3” (PAu 1,117,191); August 11, 1987 registration date; and
- “Robotech 3000” (PAu 2,415,945); May 26, 1999 registration date.

The certificates for these registrations are attached as Exhibit A.

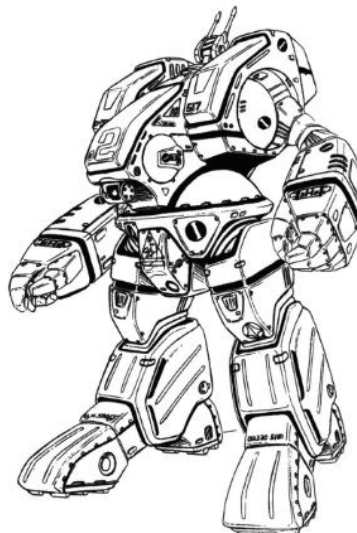
16. The warrior robots depicted in the Robotech copyright registrations owned by Harmony Gold include, but are not limited to, the following:

Robotech Warrior Robot Name	Robotech Warrior Robot Image
Armored Valkyrie	
Destroid Defender	

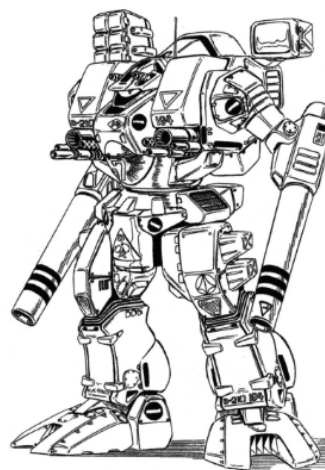
Destroid Phalanx



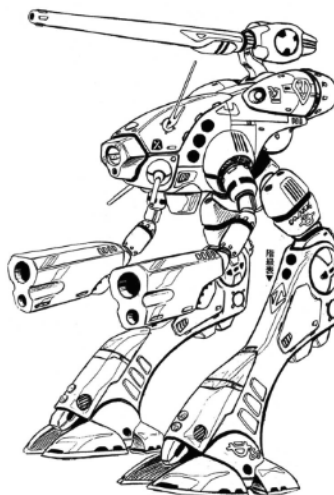
Destroid Spartan



Destroid Tomahawk

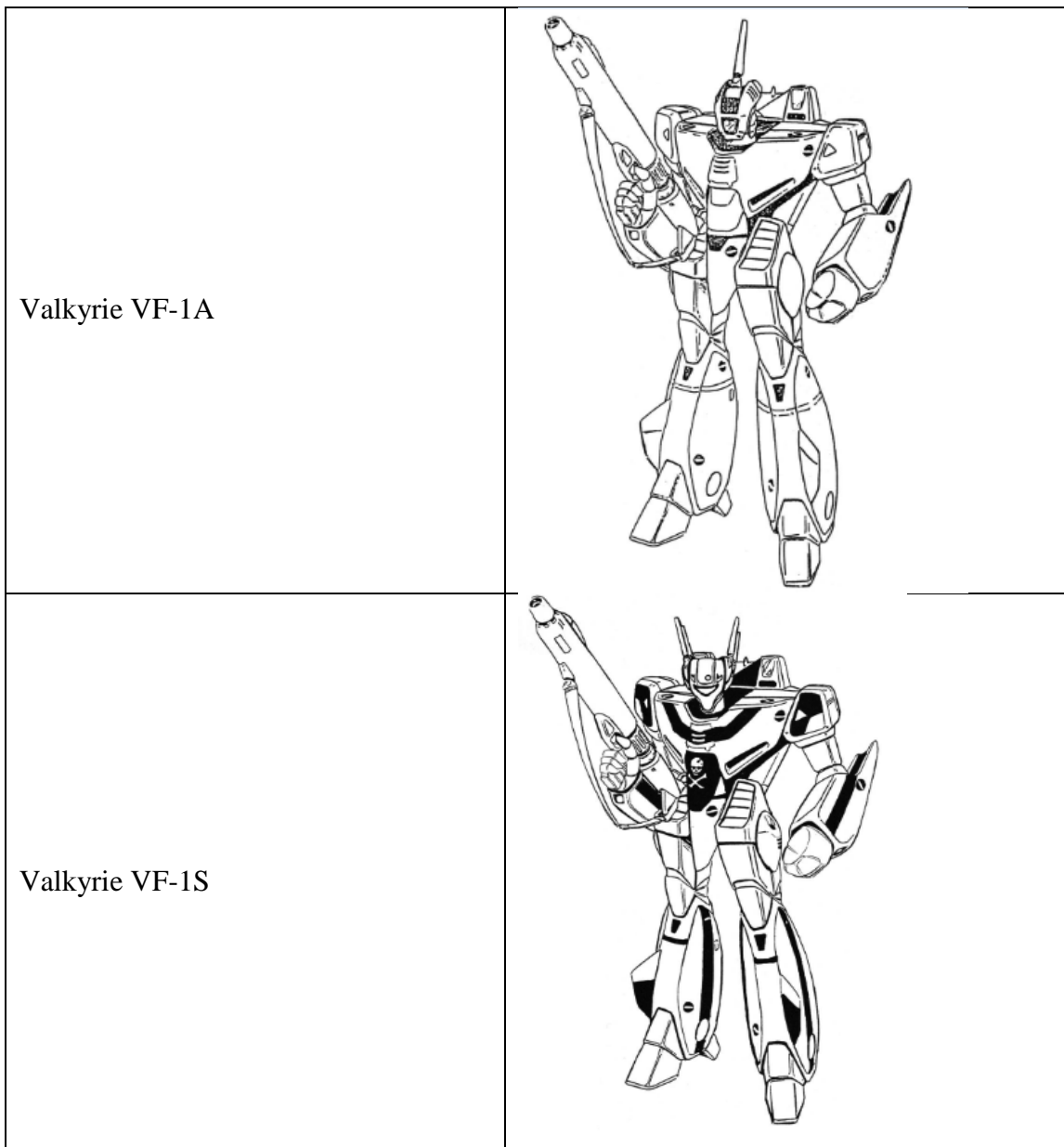


Officer's Pod (Glaug)



Super Valkyrie





Japanese Litigation Between Big West and Tatsunoko

17. In the early 2000s, Big West and Studio Nue on the one hand, and Tatsunoko, on the other hand, underwent a series of litigations in Japan to determine—as between these parties—who owned what rights in and to “Macross.”

18. While the Japanese court decisions limited Tatsunoko’s right to make derivative works based on the “Macross” characters, they confirmed that Tatsunoko owned the copyright in the “Macross” series to the exclusion of Big West and Studio Nue, and that Tatsunoko owned the

1 exclusive right to license “Macross” internationally, thereby validating Tatsunoko’s exclusive  
 2 license of the “Macross” copyright and related international rights to Harmony Gold..

3 19. Harmony Gold is informed, and believes, that Tatsunoko’s exclusive right to  
 4 license the works internationally was subsequently confirmed by agreement between Tatsunoko  
 5 and Big West.

6 20. As a result of the litigation between Tatsunoko and Big West, Tatsunoko and  
 7 Harmony Gold amended their license agreement, first in 1998 and then again in 2003, to remove  
 8 Harmony Gold’s exclusive right to make derivative films or television works based on the  
 9 “Macross” character images, which include the Robotech warrior robots. However, Harmony  
 10 Gold continues to have the exclusive right to make copies of, distribute, publicly perform,  
 11 display, and merchandize the “Macross” character images, including the Robotech warrior  
 12 robots, in the United States, with full rights to enforce each and all of its exclusive rights.

#### 13 Harmony Gold’s Prior Litigation Against Weisman

14 21. In 1995, Harmony Gold filed a copyright infringement and unfair competition  
 15 complaint against FASA Corporation, which was owned by Weisman, and Virtual World  
 16 Entertainment for infringement of the Robotech copyrights by the warrior robot designs in the  
 17 defendants’ “BattleTech” virtual reality computer games, role playing games, merchandise and a  
 18 planned animated television series and toy line.

19 22. This prior litigation concluded when the parties agreed to a “Settlement  
 20 Agreement and Mutual General Release” (the “Settlement Agreement”), which had an effective  
 21 date of December 19, 1996, and to which Weisman was a signatory. In addition to agreeing to a  
 22 monetary payment, Weisman and his co-defendants agreed that they would not “make any use,  
 23 and will not authorize [their] licensees to make any use, of the visual design images of the twelve  
 24 (12) Battlmechs listed below except as provided in this agreement.” These 12 “Battlmechs”  
 25 include those detailed below in Paragraph 28, which presents side-by-side comparisons of

1 Harebrained Schemes’ and Weisman’s current warrior robot designs and the corresponding  
 2 Harmony Gold Robotech designs. Weisman also agreed to the entry of a permanent injunction  
 3 and acknowledged that violating the use restriction would cause Harmony Gold “irreparable  
 4 harm.” Further, Weisman agreed that he would not “contest, nor [would he] assist any other  
 5 person or entity in contesting, Harmony Gold’s exclusive ownership worldwide, excluding  
 6 Japan,” of the Robotech merchandising rights. This Settlement Agreement is confidential, and  
 7 therefore has not been attached to this Complaint.

8 Current Unauthorized Copying by Defendant Piranha Games

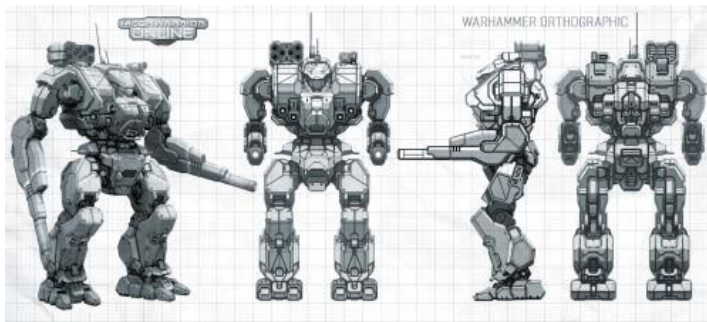
9 23. Defendant video game production company Piranha Games developed and  
 10 distributes an online game named “MechWarrior Online” incorporating warrior robots, which it  
 11 calls “A BattleTech Game.” In May 2013, Piranha Games submitted a proposed design to  
 12 Harmony Gold for an animated warrior robot for use in MechWarrior Online to get an opinion  
 13 from Harmony Gold if this new design infringed Harmony Gold’s Robotech copyrights.  
 14 Harmony Gold determined that Piranha Games’ design unlawfully copied its copyrighted  
 15 Destroid Tomahawk warrior robot, and Harmony Gold’s outside counsel sent an e-mail to  
 16 Piranha Games’ founder and president Russ Bullock informing him of that decision. On  
 17 information and belief, Piranha Games never used this proposed 2013 design.

18 24. Later in May 2013, Mr. Bullock sent another proposed design for a MechWarrior  
 19 Online warrior robot to Harmony Gold’s counsel. Harmony Gold determined that Piranha  
 20 Games’ new design unlawfully copied Harmony Gold’s copyrighted Zentradei OBP warrior  
 21 robot, and therefore infringed Harmony Gold’s registered copyrights. Harmony Gold’s counsel  
 22 again informed Mr. Bullock of that determination via e-mail. On information and belief, Piranha  
 23 Games never used this other proposed 2013 design.

24 25. In July 2016, Harmony Gold discovered infringing images that unlawfully copied  
 25 works of its Destroid Tomahawk warrior robot featured on the website of Catalyst Game Labs, a



purveyor of board games. A blog post from Catalyst Game Labs reads, “It’s been an absolute blast working withy [sic] Matt Newman, Russ Bullock (and of course their whole great team) generating these lore vignettes.” The following image of the infringing robot warriors appeared on the blog post by Catalyst Game Labs:



26. Harmony Gold’s counsel immediately e-mailed Mr. Bullock regarding this infringement, and in his response Mr. Bullock admitted that Piranha Games had developed these warrior robot designs, and that Catalyst Game Labs created fan fiction around these designs. He also wrote: “At Piranha we make no claim to any use or legal right to the Robotech Macross designs that are owned by Harmony Gold.”


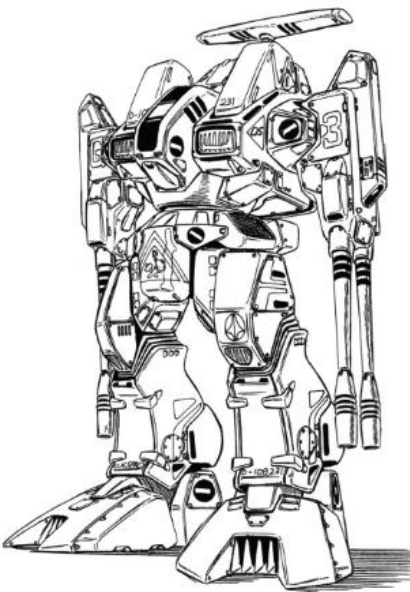

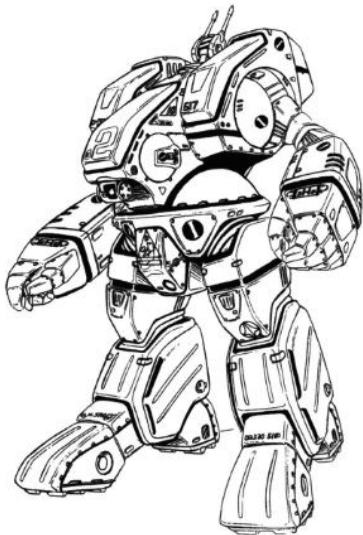
27. Despite Mr. Bullock’s admission that Piranha Games does not have the right to use Harmony Gold’s copyrighted Robotech designs, Piranha Games is doing exactly that without Harmony Gold’s permission. Piranha Games operates a website for its MechWarrior Online game at [www.mwomercs.com](http://www.mwomercs.com). On this site, Piranha Games displays the following images of robot warriors that infringe Harmony Gold’s copyrights and that appear to be used in the MechWarrior Online game:

///

///

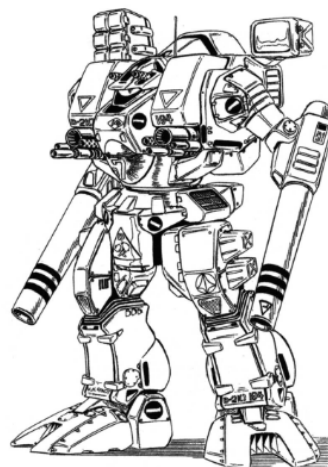
///



Piranha Games' Infringing Image	Harmony Gold's Copyrighted Image
 <p>(Rifleman)</p>	 <p>(Destroid Defender)</p>
 <p>(Archer)</p>	 <p>(Destroid Spartan)</p>



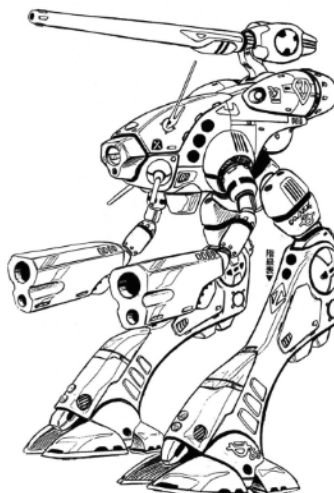
(Warhammer)



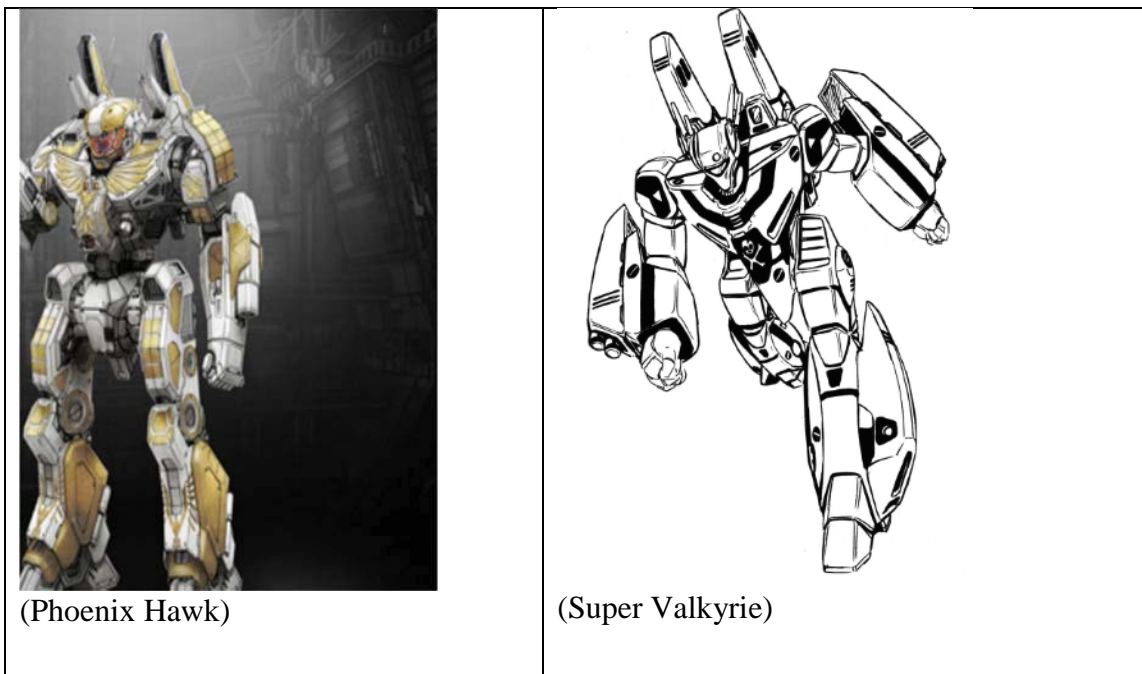
(Destroid Tomahawk)



(Marauder/Marauder IIC)



(Officer's Pod/Glaug)



28. On October 3, 2016, Harmony Gold's counsel sent a letter to Mr. Bullock and Weisman (as MechWarrior Online is branded as "A BattleTech Game"), demanding that this infringement stop, and demanding that Mr. Bullock and Weisman disclose the relationship between Piranha Games and Harebrained Schemes for the creation of MechWarrior Online. Piranha Games retained U.S. counsel and denied that the robot warriors in MechWarrior Online infringe Harmony Gold's copyrights.


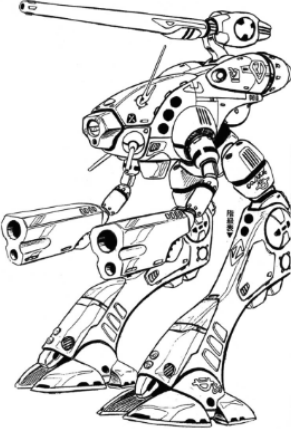


29. To this date, Piranha Games' infringement continues.

Current Unauthorized Copying by Defendants Harebrained Schemes and Weisman

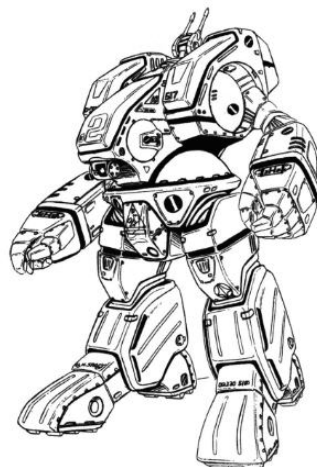
30. Defendant video game production studio Harebrained Schemes is in the process of developing a new PC video game named "BattleTech." The BattleTech website at [www.battletechgame.com](http://www.battletechgame.com) reads, "Jordan Weisman, the creator of BattleTech and MechWarrior, is back with the first turn-based BattleTech game for PC in over two decades. BATTLETECH will feature modern turn-based combat, PVP multiplayer, and a story-driven, Mercenaries-style campaign set in the 3025 era of the BattleTech universe."

31. Harebrained Schemes held two crowdfunding campaigns for its BattleTech game. As of April 28, 2017, its Kickstarter campaign had raised \$2,785,537.13 from 41,733 backers, and its BackerKit campaign had raised \$433,058.95 from 49,404 backers.

32. On its websites at [www.harebrained-schemes.com](http://www.harebrained-schemes.com) and [www.battletechgame.com](http://www.battletechgame.com), Harebrained Schemes displays the following images of robot warriors that infringe Harmony Gold's copyrights. On information and belief, these are depictions of the warrior robots that will be featured in the upcoming BattleTech video game:

Harebrained Schemes' Infringing Image	Harmony Gold's Original Image
	 (Officer's Pod/Glaug)
	 (Armored Valkyrie)





(Destroid Spartan)

33. Joe DiNunzio, Chief Financial Officer for Harebrained Holdings, Inc., responded on November 7, 2016, to the October 3, 2016, letter from Harmony Gold's counsel described above in Paragraph 24. In that letter, he claimed that, "Our use of these designs and images is solely through licenses we have obtained from Piranha Games. Our relationship with Piranha Games is solely as a licensee of certain intellectual property."

34. Subsequently, on November 18, 2016, counsel for Weisman and Harebrained Schemes responded to the October 3 letter from Harmony Gold's counsel as follows:


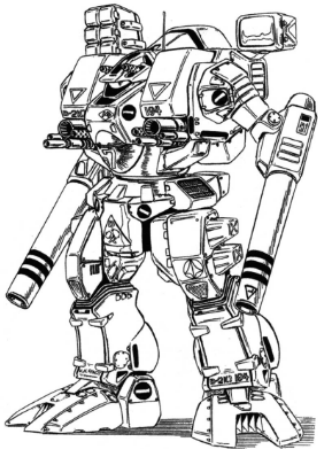
HBS entered into a license agreement with Piranha Games to license certain content for use in a HBS game. We have certain confidentiality obligations with respect to the license agreement so we cannot comment as to specific details. However, we can say that the license agreement makes general commitments about Piranha's rights in the licensed materials provided to HBS, but that the parties did not specifically address the ownership of the 2016 designs.

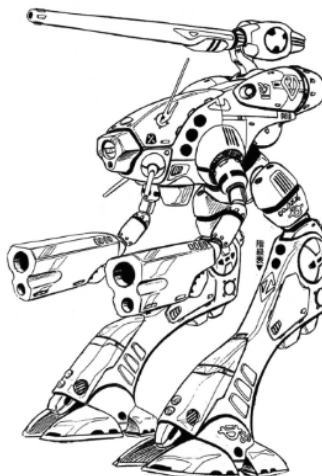
35. To this date, Harebrained Schemes' and Weisman's infringement continues.

Current Unauthorized Copying by Defendant Catalyst Game Labs

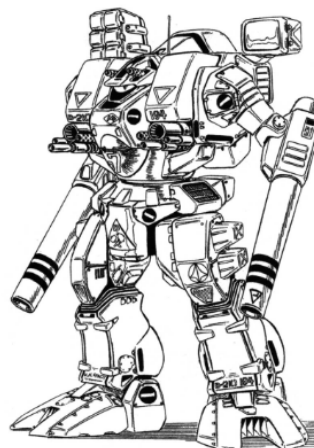
36. Catalyst Game Labs produces a board game and roleplaying game named “BattleTech.”

37. For its BattleTech game, Catalyst Game Labs develops, releases, distributes and sells sourcebooks to create new playing scenarios for players of the game. In 2016, Catalyst Game Labs released a BattleTech sourcebook named “Combat Manual: Mercenaries.” This sourcebook contains numerous images of robot warriors that infringe Harmony Gold’s copyrights, including the following:

Catalyst Game Labs’ Infringing Image in Combat Manual: Mercenaries	Harmony Gold’s Copyrighted Image
	 (Destroid Tomahawk)



(Officer's Pod/Glaug)

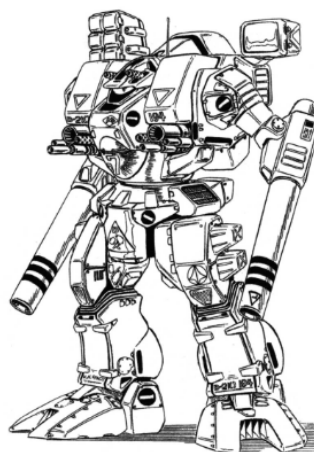
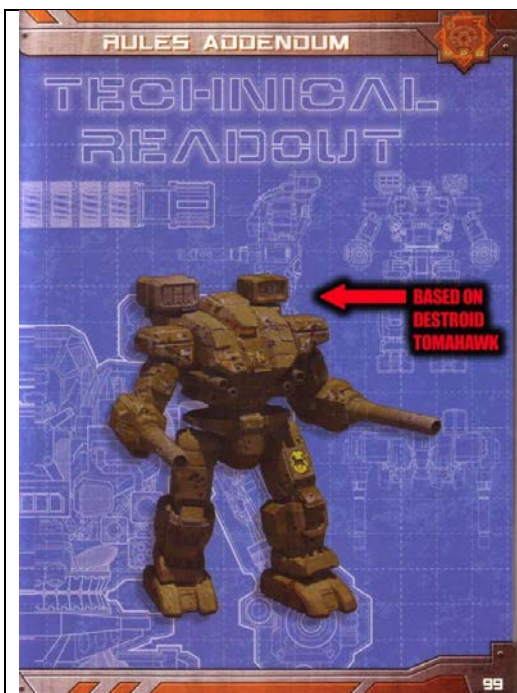


(Destroid Tomahawk)

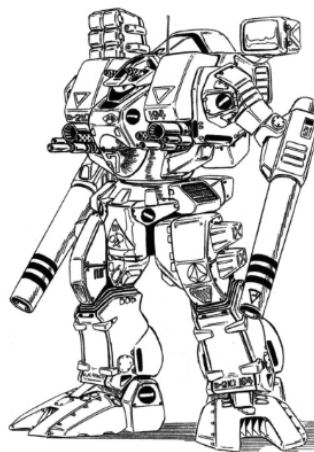




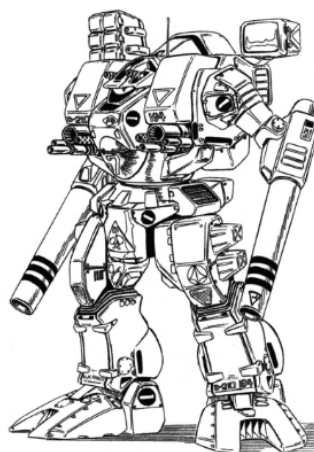




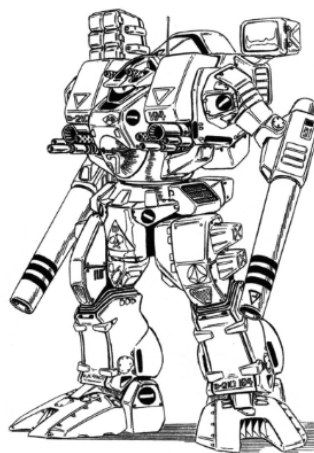
(Destroid Tomahawk)



(Destroid Tomahawk)



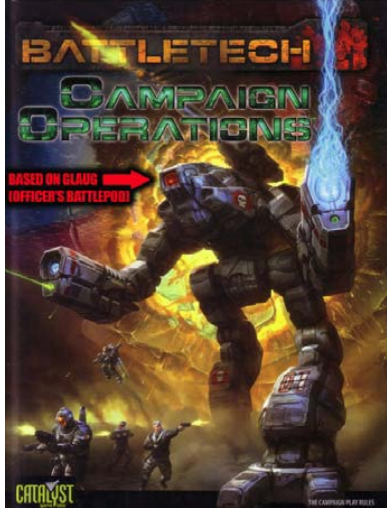
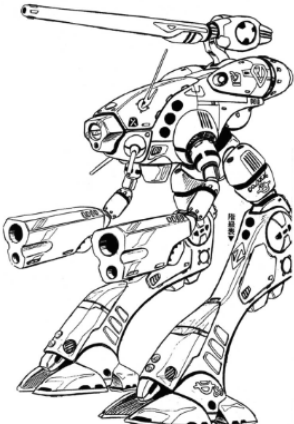

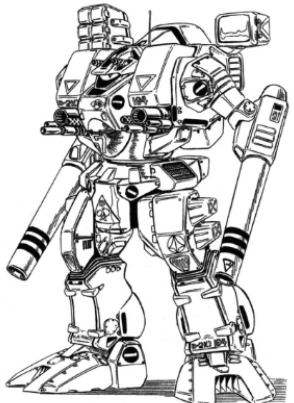
(Destroid Tomahawk)



(Destroid Tomahawk)



38. Catalyst Game Labs also develops, releases, distributes and sells new rule books for its BattleTech game. In 2016, it released a new rule book named “BattleTech: Campaign Operations.” This rule book contains several images of robot warriors that infringe Harmony Gold’s copyrights, including the following:

Catalyst Game Labs’ Infringing Image in BattleTech: Campaign Operations	Harmony Gold’s Copyrighted Image
	 (Officer's Pod/Glaug)
	 (Destroid Tomahawk)



(Destroid Spartan)

## COUNT I COPYRIGHT INFRINGEMENT — ALL DEFENDANTS

39. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through 38 as if fully set forth herein.

40. Harmony Gold owns the copyrights to numerous Robotech warrior robots, including those identified above.

41. Defendants have infringed Harmony Gold's copyrights to these warrior robots through their unauthorized copying, distribution and display of warrior robots that are substantially similar to those owned by Harmony Gold, and that infringe upon Harmony Gold's exclusive rights to reproduce, distribute, display, and merchandize the Robotech warrior robots.

42. Defendants had access to Harmony Gold's copyrighted Robotech images prior to Defendants' unauthorized and infringing uses of the images.

43. Defendants' actions have irreparably damaged and, unless enjoined, will continue to irreparably damage Harmony Gold. Harmony Gold has no adequate remedy at law for these wrongs and injuries. Harmony Gold is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants, employees, attorneys and all persons acting in concert with them from infringing Harmony Gold's copyrights.

44. Defendants have infringed Harmony Gold's copyrights willfully.

45. Harmony Gold is entitled to recover damages sustained from Defendants' unlawful conduct, including Defendants' profits; Harmony Gold's damages; or, alternatively, at Harmony Gold's election, statutory damages.

**COUNT II  
(BREACH OF CONTRACT AGAINST WEISMAN AND  
HAREBRAINED SCHEMES)**

46. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through 45 as if fully set forth herein.

47. Harmony Gold and Weisman entered into a contract (*i.e.*, the Settlement Agreement) in December 1996, which is still valid and in effect today. The Settlement Agreement prohibits Weisman from using colorable imitations of certain Robotech warrior robots owned by Harmony Gold, including making works substantially similar to, or making derivative works of, these warrior robots.

48. As shown in Paragraphs 30–35 above, Weisman, through and with Harebrained Schemes, has created and announced plans to copy, display and distribute warrior robots that are substantially similar to, and unauthorized derivative works of, Harmony Gold's Robotech warrior robots which Weisman agreed in the Settlement Agreement not to use. Therefore, under the law of the State of Washington, Weisman and Harebrained Schemes have breached the Settlement Agreement.

WHEREFORE, Harmony Gold prays that the Court:

2. Award Harmony Gold its damages or Defendants' profits, or alternatively, at Harmony Gold's election, statutory damages, as a result of Defendants' infringement of Harmony Gold's copyrights;

4. Issue an order requiring Harebrained Schemes and Weisman, their agents, servants, employees, attorneys and all those acting in concert with them to abide by the Settlement Agreement;

6. Award Harmony Gold such other and further relief as the Court deems just and

///

1 DATED: November \_\_, 2017

CALFO EAKES & OSTROVSKY PLLC

2 By \_\_\_\_\_

3 Damon C. Elder, WSBA #46754  
4 Andrew R.W. Hughes, WSBA #49515  
5 1301 Second Avenue, Suite 2800  
6 Seattle, WA 98101  
7 Phone: (206) 407-2200  
8 Fax: (206) 407-2224  
9 Email: damone@calfoeakes.com  
10 andrewh@calfoeakes.com

11 LATHAM & WATKINS LLP  
12 Jessica Stebbins Bina (admitted *pro hac vice*)  
13 *jessica.stebbinsbina@lw.com*  
14 10250 Constellation Blvd., Suite 1100  
15 Los Angeles, California 90067  
16 Telephone: (424) 653-5500  
17 Facsimile: (424) 653-5501

18 *Attorneys for Plaintiff Harmony Gold U.S.A., Inc.*

## **EXHIBIT 2**



THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,  
HAREBRAINED HOLDINGS, INC.,  
JORDAN WEISMAN, PIRANHA GAMES  
INC., INMEDIARES PRODUCTIONS,  
LLC, and DOES 1–10

Defendants.

CASE NO. 2:17-cv-00327-TSZ

**SECOND AMENDED COMPLAINT**

Plaintiff Harmony Gold U.S.A., Inc. (“Harmony Gold”) alleges as follows:

**PARTIES**

1. Plaintiff Harmony Gold U.S.A., Inc., is a California corporation with its principal place of business in Los Angeles, California.
2. Defendant Harebrained Schemes LLC is a limited liability company formed under the laws of the State of Washington with its principal place of business in Kirkland, Washington.
3. Defendant Harebrained Holdings, Inc., is a corporation formed under the laws of the State of Washington with its principal place of business in Bellevue, Washington. On information and belief, Harebrained Holdings, Inc., does business under the name Harebrained

1 Schemes. (Harebrained Schemes LLC and Harebrained Holdings, Inc., are referred to  
2 collectively as “Harebrained Schemes”).

3 4. Defendant Jordan Weisman (“Weisman”) is an individual who, on information  
4 and belief, resides in Bellevue, Washington. On further information and belief, Weisman is the  
5 CEO and registered agent for Harebrained Schemes LLC, and is a governor of Harebrained  
6 Holdings, Inc. Weisman is the moving, active and conscious force behind Harebrained Schemes;  
7 has directed and controlled the activities of Harebrained Schemes complained of herein; has  
8 participated in, assisted in and/or is responsible for the conduct alleged herein; and entered into  
9 the Settlement Agreement with Harmony Gold at issue in the breach-of-contract claim set forth  
10 in this Complaint.

11 5. Defendant Piranha Games Inc. (“Piranha Games”) is a corporation created under  
12 the laws of British Columbia, Canada, with its principal place of business in Vancouver, British  
13 Columbia, Canada.

14 6. Defendant InMediaRes Productions, LLC, is a limited liability company formed  
15 under the laws of the State of Washington, with its principal place of business in Lake Stevens,  
16 Washington. On information and belief, InMediaRes Productions, LLC, operates the imprint  
17 game production company Catalyst Game Labs, and hereinafter is referred to as “Catalyst Game  
18 Labs”.

19 7. On information and belief, Does 1–10 (collectively, the “Doe Defendants”) are  
20 individuals and business entities who have participated or assisted in the conduct alleged herein  
21 or are otherwise responsible therefor. The identities of these Doe Defendants presently are not  
22 and cannot be known to Harmony Gold, but these persons and/or entities will be added as named  
23 defendants to this action as and when they are identified (collectively, Harebrained Schemes  
24 LLC, Harebrained Holdings, Inc., Weisman, Piranha Games, Catalyst Game Labs and the Doe  
25 Defendants are referred to herein as “Defendants”).

## JURISDICTION AND VENUE

8. This Court has jurisdiction because (i) this action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and jurisdiction is specifically conferred by 28 U.S.C. §§ 1331 and 1338(a); and (ii) this is an action between citizens of different states in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the Washington State common law claim is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) in that Defendants Harebrained Schemes LLC, Harebrained Holdings, Inc., Weisman and Catalyst Game Labs reside in this judicial district. Venue is proper under 28 U.S.C. § 1391(c)(3) in that Defendant Piranha Games is a foreign resident based in Vancouver, British Columbia, Canada, and on information and belief there is no other judicial district in which venue would be more appropriate. Venue is also proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

## FACTS

### Harmony Gold and the History of “Robotech”

10. This case involves animated giant warrior robots. In ~~about 1980~~or around 1982, Japan-based Tatsunoko Production Company, Ltd. (“Tatsunoko”), together with Japan-based Big West and Studio Nue, created a series of original warrior robots and incorporated them into an animated television series in Japan named “Macross.” ~~Tatsunoko was the exclusive owner and producer of the Macross television series in~~Although ownership in various elements of “Macross” was jointly held by Tatsunoko, Big West, and Studio Nue, by agreement between the parties, Tatsunoko has always had the exclusive right to license “Macross” internationally, including all international rights in and to the characters and artwork

1 contained in “Macross.” Consistent with this agreement, Big West and Studio Nue have  
 2 never exploited “Macross” outside of Japan.

3 11. In the early 1980s, Tatsunoko produced two additional animated television series  
 4 in Japan that incorporated its futuristic warrior robots — “Mospeada” and “The Southern  
 5 Cross”— for which it was also the exclusive owner in Japan.

6 12. In 1984, Tatsunoko granted entertainment production company Harmony Gold an  
 7 exclusive license to adapt the Macross, Mospeada and The Southern Cross series for a television  
 8 series in the United States, which Harmony Gold named “Robotech.” Harmony Gold’s  
 9 exclusive license to “Macross” expressly included all rights to the artwork, animation, and  
 10 characters contained in “Macross” including all rights to exclusively exploit the artwork,  
 11 animation, and characters. In 1985, the first of 85 episodes of the Harmony Gold-produced  
 12 Robotech animated series aired in the United States. (Hereinafter, all of Harmony Gold’s  
 13 Macross, Mospeada, The Southern Cross and Robotech shows, characters, products and  
 14 derivative works are referred to as “Robotech.”) Consistent with its agreement with  
 15 Tatsunoko, Harmony Gold obtained a copyright registration in “Macross,” including the  
 16 animation, story, and soundtrack, in all 36 episodes of the series (PAu 740,323; March 28,  
 17 1985 registration date).

18 13. Tatsunoko also granted Harmony Gold an exclusive license to market in the  
 19 United States ~~products~~ all merchandise incorporating Robotech warrior robots, such as books,  
 20 toys, video games, films, comic books and apparel. Harmony Gold possesses this exclusive  
 21 license to this day.


22 14. In 1991, Tatsunoko and Harmony Gold renewed Harmony Gold’s exclusive  
 23 license for Macross, Mospeada, and The Southern Cross, including Harmony Gold’s  
 24 exclusive license in and to the “Macross” artwork, animation, characters, and  
 25 merchandising rights in the United States, and through a series of operative amendments,  
this license remains valid today.

15. ~~14.~~ Harmony Gold and Tatsunoko are owners of a large portfolio of United States Copyright Registrations for animated programs, books, comic books and other materials incorporating images of the Robotech warrior robots, including, without limitation, the following:

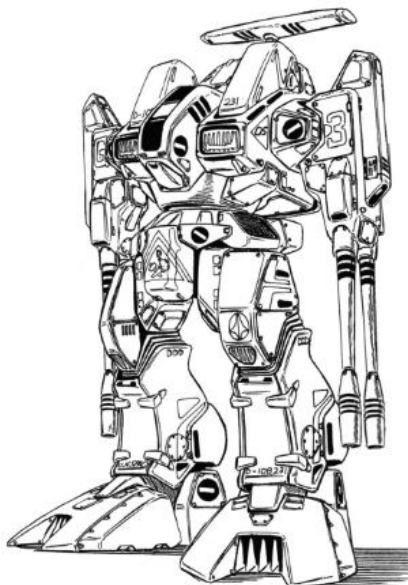
- “Macross: Booby Trap” (PA 252,486); February 7, 1985 registration date;
- “Mospeada” (PAu 740,321); March 28, 1985 registration date;
- “Southern Cross” (PAu 740,322); March 28, 1985 registration date;
- “Macross” (PAu 740,323); March 28, 1985 registration date;
- “Robotech” (PA 260,432); August 22, 1985 registration date;
- “Robotech II: The Sentinels” (PA 370,656); August 11, 1987 registration date;
- “Robotech II: The Sentinels; Episodes 1, 2 and 3” (PAu 1,117,191); August 11, 1987 registration date; and
- “Robotech 3000” (PAu 2,415,945); May 26, 1999 registration date.

The certificates for these registrations are attached as Exhibit A.

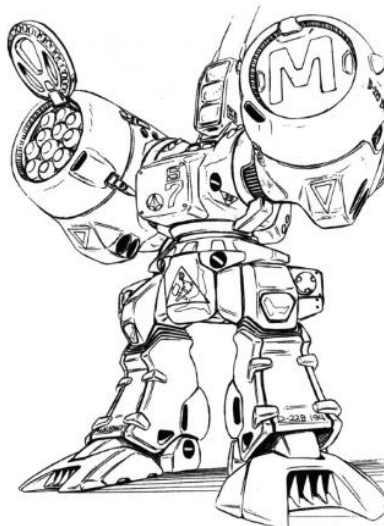
16. ~~15.~~ The warrior robots depicted in the Robotech copyright registrations owned by Harmony Gold include, but are not limited to, the following:

Robotech Warrior Robot Name	Robotech Warrior Robot Image
Armored Valkyrie	

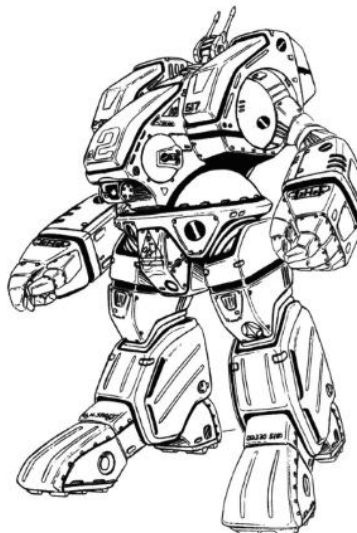
Destroid Defender



Destroid Phalanx

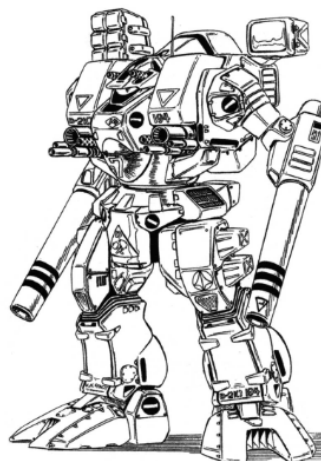


Destroid Spartan





Destroid Tomahawk



Officer's Pod (Glaug)



Super Valkyrie



Valkyrie VF-1A



Valkyrie VF-1S



Japanese Litigation Between Big West and Tatsunoko

17. In the early 2000s, Big West and Studio Nue on the one hand, and Tatsunoko, on the other hand, underwent a series of litigations in Japan to determine—as between these parties—who owned what rights in and to “Macross.”

18. While the Japanese court decisions limited Tatsunoko’s right to make derivative works based on the “Macross” characters, they confirmed that Tatsunoko owned the copyright in the “Macross” series to the exclusion of Big West and Studio Nue,

and that Tatsunoko owned the exclusive right to license “Macross” internationally, thereby validating Tatsunoko’s exclusive license of the “Macross” copyright and related international rights to Harmony Gold..

19. 16. Harmony Gold ~~has the~~ is informed, and believes, that Tatsunoko’s exclusive right to ~~make copies of, distribute, publicly perform, display and make derivative works of the Robotech warrior robots in the United States.~~ license the works internationally was subsequently confirmed by agreement between Tatsunoko and Big West.

20. As a result of the litigation between Tatsunoko and Big West, Tatsunoko and Harmony Gold amended their license agreement, first in 1998 and then again in 2003, to remove Harmony Gold’s exclusive right to make derivative films or television works based on the “Macross” character images, which include the Robotech warrior robots. However, Harmony Gold continues to have the exclusive right to make copies of, distribute, publicly perform, display, and merchandize the “Macross” character images, including the Robotech warrior robots, in the United States, with full rights to enforce each and all of its exclusive rights.

#### Harmony Gold’s Prior Litigation Against Weisman

21. 17. In 1995, Harmony Gold filed a copyright infringement and unfair competition complaint against FASA Corporation, which was owned by Weisman, and Virtual World Entertainment for infringement of the Robotech copyrights by the warrior robot designs in the defendants’ “BattleTech” virtual reality computer games, role playing games, merchandise and a planned animated television series and toy line.

22. 18. This prior litigation concluded when the parties agreed to a “Settlement Agreement and Mutual General Release” (the “Settlement Agreement”), which had an effective date of December 19, 1996, and to which Weisman was a signatory. In addition to agreeing to a monetary payment, Weisman and his co-defendants agreed that they would not “make any use,

and will not authorize [their] licensees to make any use, of the visual design images of the twelve (12) Battlemechs listed below except as provided in this agreement.” These 12 “Battlemechs” include those detailed below in Paragraph 28, which presents side-by-side comparisons of Harebrained Schemes’ and Weisman’s current warrior robot designs and the corresponding Harmony Gold Robotech designs. Weisman also agreed to the entry of a permanent injunction and acknowledged that violating the use restriction would cause Harmony Gold “irreparable harm.” Further, Weisman agreed that he would not “contest, nor [would he] assist any other person or entity in contesting, Harmony Gold’s exclusive ownership worldwide, excluding Japan,” of the Robotech merchandising rights. This Settlement Agreement is confidential, and therefore has not been attached to this Complaint.

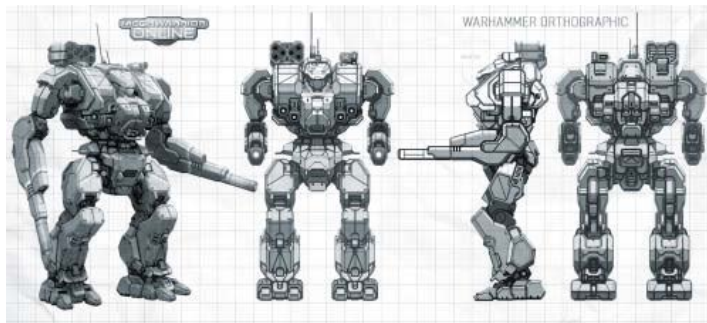
#### Current Unauthorized Copying by Defendant Piranha Games

23. ~~19.~~ Defendant video game production company Piranha Games developed and distributes an online game named “MechWarrior Online” incorporating warrior robots, which it calls “A BattleTech Game.” In May 2013, Piranha Games submitted a proposed design to Harmony Gold for an animated warrior robot for use in MechWarrior Online to get an opinion from Harmony Gold if this new design infringed Harmony Gold’s Robotech copyrights. Harmony Gold determined that Piranha Games’ design ~~was derivative of~~ unlawfully copied its copyrighted Destroid Tomahawk warrior robot, and Harmony Gold’s outside counsel sent an e-mail to Piranha Games’ founder and president Russ Bullock informing him of that decision. On information and belief, Piranha Games never used this proposed 2013 design.

24. ~~20.~~ Later in May 2013, Mr. Bullock sent another proposed design for a MechWarrior Online warrior robot to Harmony Gold’s counsel. Harmony Gold determined that Piranha Games’ new design ~~was derivative of~~ unlawfully copied Harmony Gold’s copyrighted Zentradei OBP warrior robot, and therefore infringed Harmony Gold’s registered copyrights.

Harmony Gold's counsel again informed Mr. Bullock of that determination via e-mail. On information and belief, Piranha Games never used this other proposed 2013 design.

25. ~~21.~~ In July 2016, Harmony Gold discovered infringing images that ~~were~~ ~~derivative~~ unlawfully copied works of its Destroid Tomahawk warrior robot featured on the website of Catalyst Game Labs, a purveyor of board games. A blog post from Catalyst Game Labs reads, "It's been an absolute blast working withy [sic] Matt Newman, Russ Bullock (and of course their whole great team) generating these lore vignettes." The following image of the infringing robot warriors appeared on the blog post by Catalyst Game Labs:




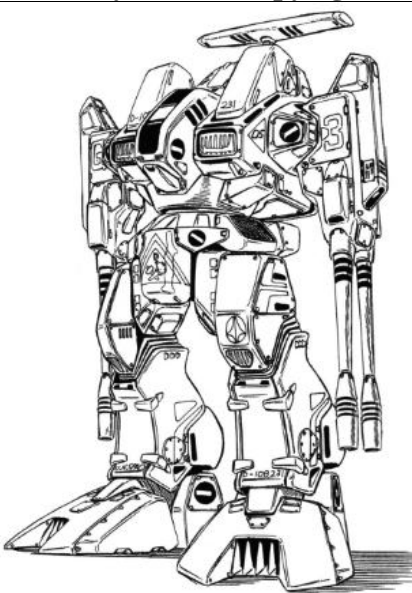
26. ~~22.~~ Harmony Gold's counsel immediately e-mailed Mr. Bullock regarding this infringement, and in his response Mr. Bullock admitted that Piranha Games had developed these warrior robot designs, and that Catalyst Game Labs created fan fiction around these designs. He also wrote: "At Piranha we make no claim to any use or legal right to the Robotech Macross designs that are owned by Harmony Gold."

27. ~~23.~~ Despite Mr. Bullock's admission that Piranha Games does not have the right to use Harmony Gold's copyrighted Robotech designs, Piranha Games is doing exactly that without Harmony Gold's permission. Piranha Games operates a website for its MechWarrior Online game at [www.mwomercs.com](http://www.mwomercs.com). On this site, Piranha Games displays the following images of robot warriors that infringe Harmony Gold's copyrights and that appear to be used in the MechWarrior Online game:

///

1 ///

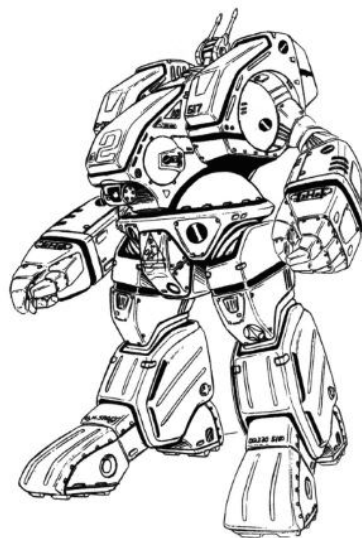
2 ///

Piranha Games' Infringing Image	Harmony Gold's Copyrighted Image
	
(Rifleman)	(Destroid Defender)





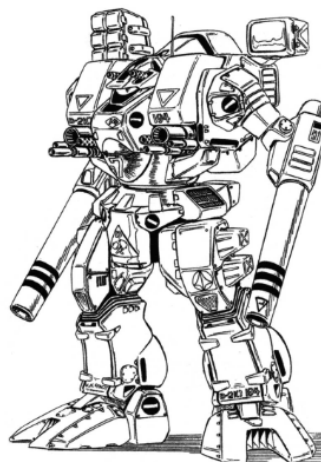
(Archer)



(Destroid Spartan)



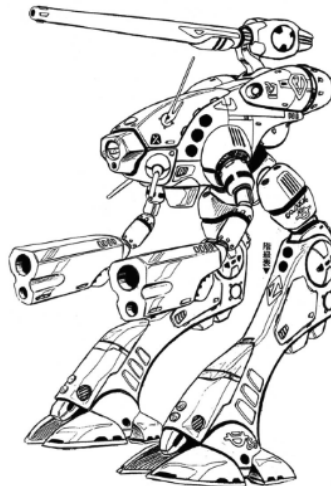
(Warhammer)



(Destroid Tomahawk)



(Marauder/Marauder IIC)



(Officer's Pod/Glaug)



(Phoenix Hawk)



(Super Valkyrie)

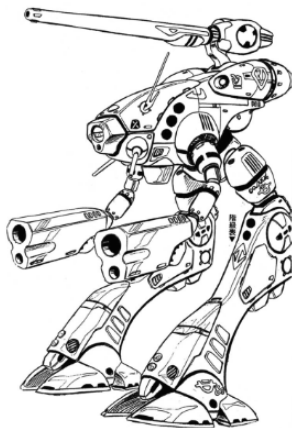
28. ~~24.~~ On October 3, 2016, Harmony Gold's counsel sent a letter to Mr. Bullock and Weisman (as MechWarrior Online is branded as "A BattleTech Game"), demanding that this infringement stop, and demanding that Mr. Bullock and Weisman disclose the relationship between Piranha Games and Harebrained Schemes for the creation of MechWarrior Online.

## Current Unauthorized Copying by Defendants Harebrained Schemes and Weisman

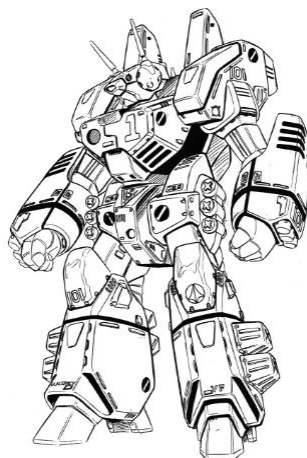
31. ~~27.~~ Harebrained Schemes held two crowdfunding campaigns for its BattleTech game. As of April 28, 2017, its Kickstarter campaign had raised \$2,785,537.13 from 41,733 backers, and its BackerKit campaign had raised \$433,058.95 from 49,404 backers.

32. ~~28.~~ On its websites at [www.harebrained-schemes.com](http://www.harebrained-schemes.com) and [www.battletechgame.com](http://www.battletechgame.com), Harebrained Schemes displays the following images of robot warriors that infringe Harmony Gold’s copyrights. On information and belief, these are depictions of the warrior robots that will be featured in the upcoming BattleTech video game:

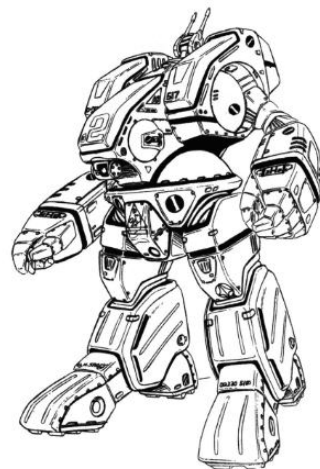
LAW OFFICES  
**CALFO EAKES & OSTROVSKY PLLC**  
1301 SECOND AVENUE, SUITE 2800  
SEATTLE, WASHINGTON 98101  
TEL (206) 407-2200 FAX (206) 407-2224



(Officer's Pod/Glaug)



(Armored Valkyrie)



(Destroid Spartan)



33. ~~29.~~ Joe DiNunzio, Chief Financial Officer for Harebrained Holdings, Inc., responded on November 7, 2016, to the October 3, 2016, letter from Harmony Gold's counsel described above in Paragraph 24. In that letter, he claimed that, "Our use of these designs and images is solely through licenses we have obtained from Piranha Games. Our relationship with Piranha Games is solely as a licensee of certain intellectual property."

34. ~~30.~~ Subsequently, on November 18, 2016, counsel for Weisman and Harebrained Schemes responded to the October 3 letter from Harmony Gold's counsel as follows:

HBS entered into a license agreement with Piranha Games to license certain content for use in a HBS game. We have certain confidentiality obligations with respect to the license agreement so we cannot comment as to specific details. However, we can say that the license agreement makes general commitments about Piranha's rights in the licensed materials provided to HBS, but that the parties did not specifically address the ownership of the 2016 designs.

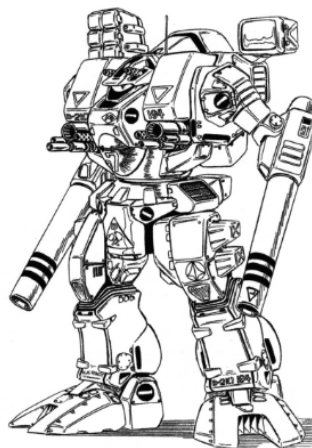
35. ~~31.~~ To this date, Harebrained Schemes' and Weisman's infringement continues.

#### Current Unauthorized Copying by Defendant Catalyst Game Labs

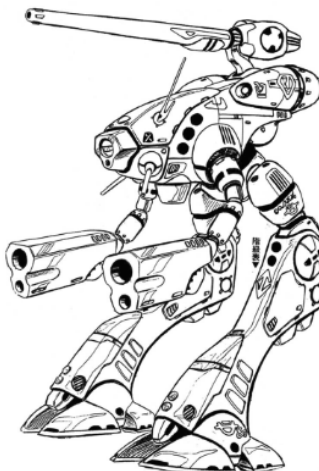
36. ~~32.~~ Catalyst Game Labs produces a board game and roleplaying game named "BattleTech."

37. ~~33.~~ For its BattleTech game, Catalyst Game Labs develops, releases, distributes and sells sourcebooks to create new playing scenarios for players of the game. In 2016, Catalyst Game Labs released a BattleTech sourcebook named "Combat Manual: Mercenaries." This sourcebook contains numerous images of robot warriors that infringe Harmony Gold's copyrights, including the following:

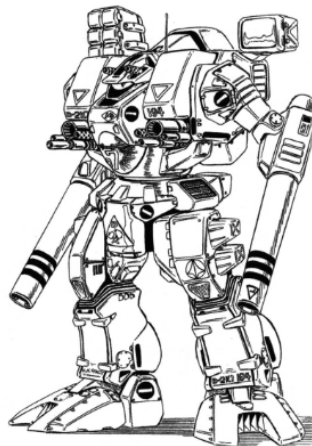
<b>Catalyst Game Labs' Infringing Image in Combat Manual: Mercenaries</b>	<b>Harmony Gold's Copyrighted Image</b>
---	---



(Destroid Tomahawk)

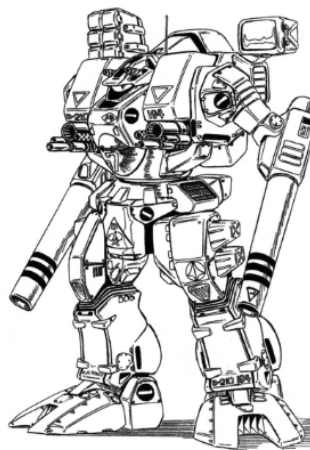


(Officer's Pod/Glaug)

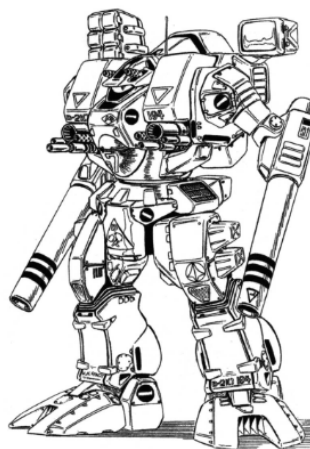


(Destroid Tomahawk)

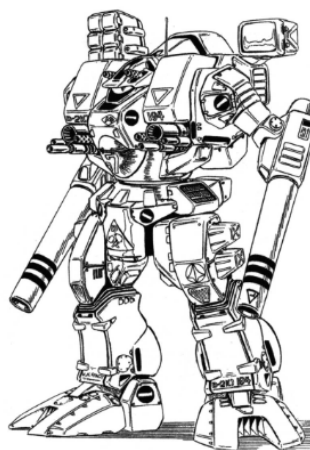
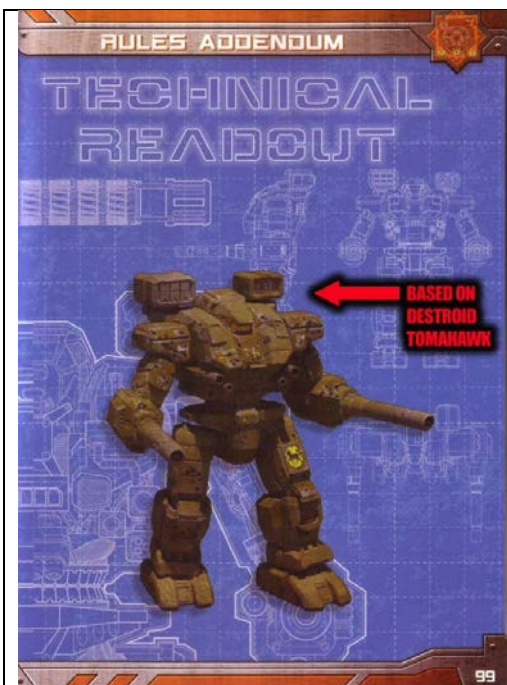




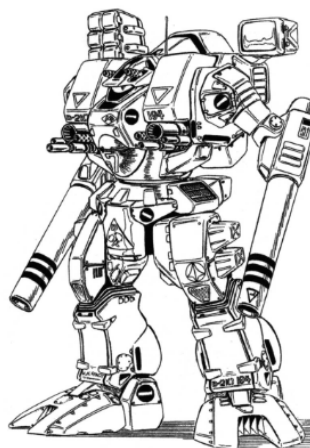
(Destroid Tomahawk)



(Destroid Tomahawk)

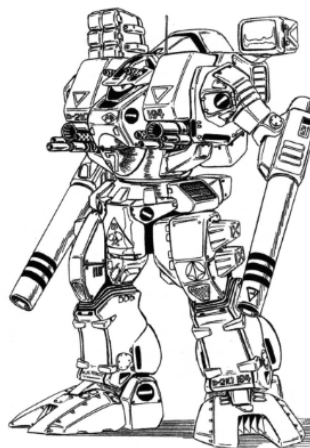


(Destroid Tomahawk)

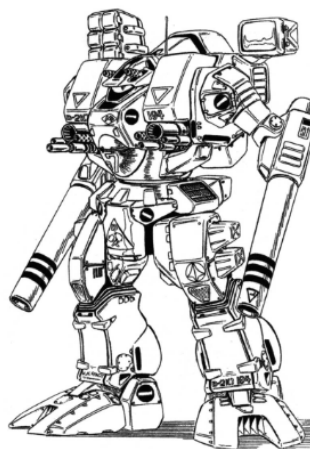
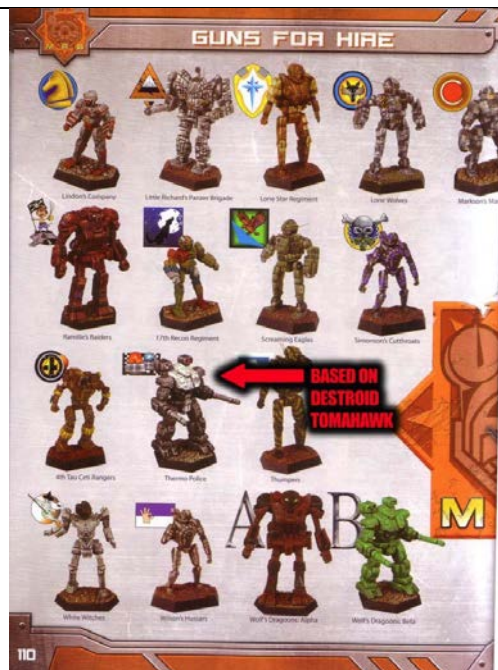


(Destroid Tomahawk)



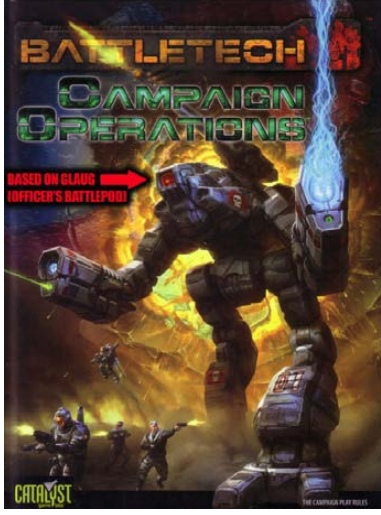
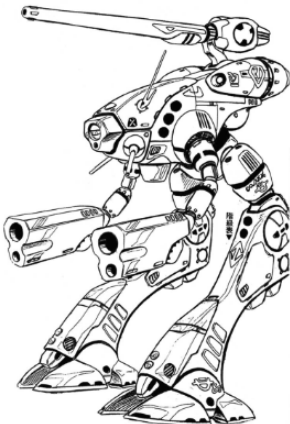

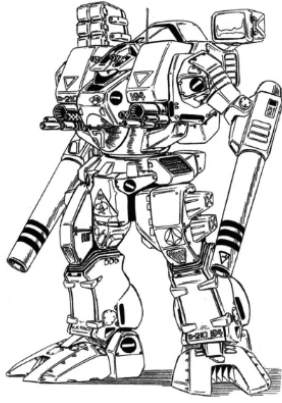


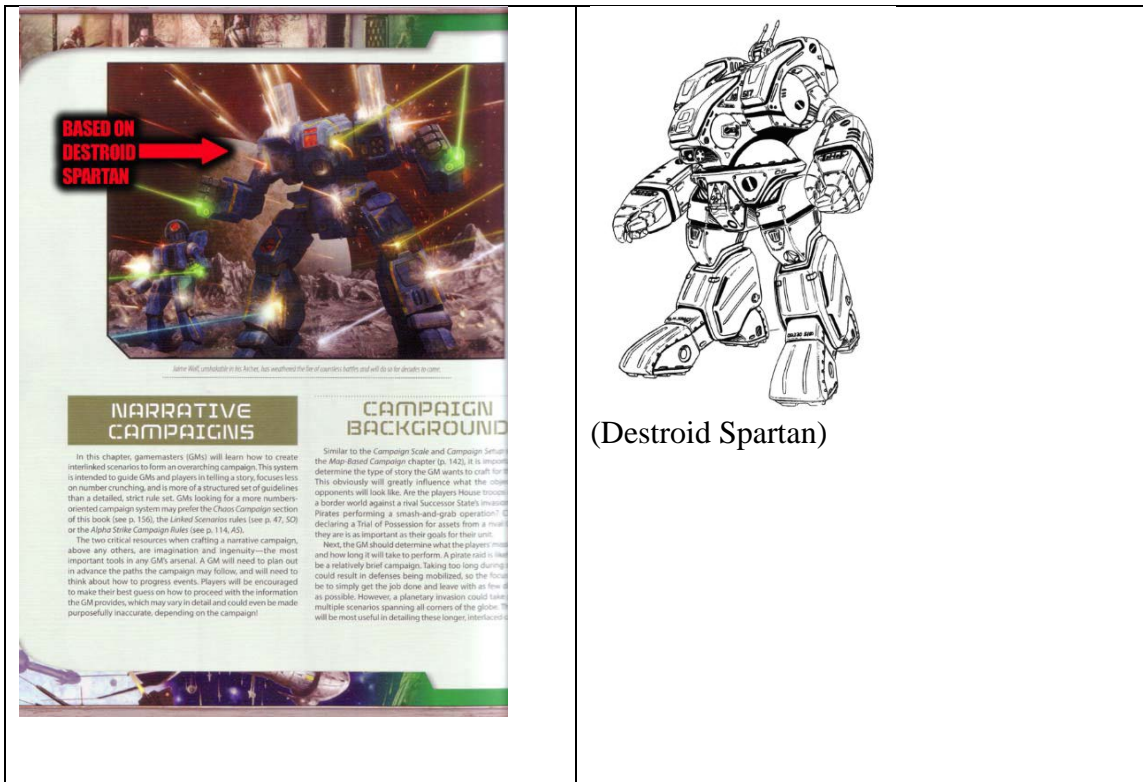
(Destroid Tomahawk)



(Destroid Tomahawk)

38. ~~34.~~ Catalyst Game Labs also develops, releases, distributes and sells new rule books for its BattleTech game. In 2016, it released a new rule book named “BattleTech: Campaign Operations.” This rule book contains several images of robot warriors that infringe Harmony Gold’s copyrights, including the following:

Catalyst Game Labs’ Infringing Image in BattleTech: Campaign Operations	Harmony Gold’s Copyrighted Image
	 (Officer's Pod/Glaug)
	 (Destroid Tomahawk)



## COUNT I COPYRIGHT INFRINGEMENT — ALL DEFENDANTS

39. ~~35.~~ Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through ~~34~~38 as if fully set forth herein.

40. ~~36.~~ Harmony Gold owns the copyrights to numerous Robotech warrior robots, including those identified above.

41. ~~37.~~ Defendants have infringed Harmony Gold's copyrights to these warrior robots through their unauthorized copying, distribution and display of warrior robots that are substantially similar to those owned by Harmony Gold, and that ~~are derivative of the copyrighted~~ infringe upon Harmony Gold's exclusive rights to reproduce, distribute, display, and merchandize the Robotech warrior robots ~~owned by Harmony Gold.~~

42. ~~38.~~ Defendants had access to Harmony Gold's copyrighted Robotech images prior to Defendants' unauthorized and infringing uses of the images.



43. ~~39.~~ Defendants' actions have irreparably damaged and, unless enjoined, will continue to irreparably damage Harmony Gold. Harmony Gold has no adequate remedy at law for these wrongs and injuries. Harmony Gold is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants, employees, attorneys and all persons acting in concert with them from infringing Harmony Gold's copyrights.

44. ~~40.~~ Defendants have infringed Harmony Gold's copyrights willfully.

45. ~~41.~~ Harmony Gold is entitled to recover damages sustained from Defendants' unlawful conduct, including Defendants' profits; Harmony Gold's damages; or, alternatively, at Harmony Gold's election, statutory damages.

## COUNT II (BREACH OF CONTRACT AGAINST WEISMAN AND HAREBRAINED SCHEMES)

46. ~~42.~~ Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through ~~34~~45 as if fully set forth herein.

47. ~~43.~~ Harmony Gold and Weisman entered into a contract (*i.e.*, the Settlement Agreement) in December 1996, which is still valid and in effect today. The Settlement Agreement prohibits Weisman from using colorable imitations of certain Robotech warrior robots owned by Harmony Gold, including making works substantially similar to, or making derivative works of, these warrior robots.

48. ~~44.~~ As shown in Paragraphs ~~26~~30–~~31~~35 above, Weisman, through and with Harebrained Schemes, has created and announced plans to copy, display and distribute warrior robots that are substantially similar to, and unauthorized derivative works of, Harmony Gold's Robotech warrior robots which Weisman agreed in the Settlement Agreement not to use.



Therefore, under the law of the State of Washington, Weisman and Harebrained Schemes have breached the Settlement Agreement.

49. ~~45.~~ As a result of this breach of the Settlement Agreement through Weisman's own actions and those of his company Harebrained Schemes, Harmony Gold has suffered and is suffering monetary damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Harmony Gold prays that the Court:

1. Preliminarily and permanently enjoin Defendants, their agents, servants, employees, attorneys and all those acting in concert with them from infringing Harmony Gold's copyrights;

2. Award Harmony Gold its damages or Defendants' profits, or alternatively, at Harmony Gold's election, statutory damages, as a result of Defendants' infringement of Harmony Gold's copyrights;

3. Award Harmony Gold its monetary damages it has incurred on account of Harebrained Schemes' and Weisman's breach of the Settlement Agreement;

4. Issue an order requiring Harebrained Schemes and Weisman, their agents, servants, employees, attorneys and all those acting in concert with them to abide by the Settlement Agreement;

5. Award Harmony Gold its costs and reasonable attorney's fees in this action; and

6. Award Harmony Gold such other and further relief as the Court deems just and proper.

///

///

///

DATED: ~~May 4~~ November, 2017

CALFO EAKES & OSTROVSKY PLLC

By ~~s/ Andrew R.W.~~  
~~Hughes~~

Damon C. Elder, WSBA #46754

Andrew R.W. Hughes, WSBA #49515

1301 Second Avenue, Suite 2800

Seattle, WA 98101

Phone: (206) 407-2200

Fax: (206) 407-2224

Email:

~~damone@calfoeakes.com~~ damone@calfoeakes.com

~~andrewh@calfoeakes.com~~ andrewh@calfoeakes.com

LATHAM & WATKINS LLP

~~Brett A. August (admitted pro hac vice)~~  
~~baa@pattishall.com~~

~~Jason Koransky~~ Jessica Stebbins Bina (admitted pro  
hac vice)

~~jmk@pattishall~~ jessica.stebbinsbina@lw.com

~~Pattishall, McAuliffe, Newbury, Hilliard &  
-Geraldson LLP~~

~~200 South Wacker Drive~~ 10250 Constellation Blvd.,  
Suite ~~2900~~ 1100

~~Chicago, Illinois 60606~~

Los Angeles, California 90067

Telephone: (~~312~~ 424) ~~554~~ 653 - ~~8000~~ 5500

Facsimile: (~~312~~ 424) ~~554~~ 653 - ~~8015~~ 5501

*Attorneys for Plaintiff Harmony Gold U.S.A., Inc.*

<b>Summary report:</b> <b>Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on</b> <b>11/22/2017 12:49:12 PM</b>	
<b>Style name:</b> L&W without Moves	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Harmony Gold - FAC.DOCX	
<b>Modified filename:</b> Harmony Gold - (Proposed) SAC.DOCX	
<b>Changes:</b>	
<u>Add</u>	88
<del>Delete</del>	71
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	1
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	160